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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1960

No. 954

RUSSELL HOBBS,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

JURISDICTIONAL STATEMENT

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OPINION BELOW

The appeal is taken from an Order affirming a conviction of the Superior Court of the State of Alaska, Third Judicial District. The conviction was affirmed by the Supreme Court of the State of Alaska, being the highest appellate court in the State, and an opinion rendered, dated February 11, 1961, reported in 359 Pacific Reporter 2d, p. 956.

JURISDICTION

Appellant invokes the jurisdiction of this Court under Title 28, United States Code, Sections 1254, 2101.

STATEMENT OF THE CASE

The question to be determined by this court is whether the United States District Court for the District (Territory) of Alaska, acting as an interim transition Court for the period between the admission of Alaska into the union and the organization of its constitutional courts, had jurisdiction to try the appellant for larceny.

The appellant was indicted in October, 1958. Alaska was admitted into the Union on January 3, 1959. The appellant was convicted in the interim transition court on March 17, 1959, and was sentenced by that court to serve five years, with two years suspended.

The Supreme Court of the State of Alaska assumed its jurisdiction on February 20, 1960. The newly created United States District Court for the District of Alaska assumed its exclusive Federal jurisdiction on February 20, 1960, and the interim United States District Court for the District (Territory) of Alaska, which had exercised both Federal and State jurisdiction went out of existence as of that date.

Appellant contends that the Supreme Court in affirming the conviction of the appellant, erred in upholding the said lower court, since the appellant was tried in a Federal legislative, not a constitutional court, attempting to exercise jurisdiction in the State after the admission of Alaska into the Union.

ARGUMENT

A. THE DISTRICT COURT FOR THE DISTRICT OF ALASKA WAS A LEGISLATIVE COURT. CONGRESS COULD NOT CONTINUE SUCH A LEGISLATIVE COURT, EVEN WITH THE CONSENT OF THE STATE.

The District Court for the Territory of Alaska was a Legislative Court, established by Congress distinct from the constitutional courts. It was manned by Federal officials operating in a State after the admission of that State into the Union. As such, it was an unconstitutional invasion of the sovereignty of the State, since it had no jurisdiction to try the appellant.

Where a judicial tribunal has no jurisdiction over the subject matter on which it assumes to act, all proceedings therein are absolutely void in the strictest sense of the term. Such absolute want of jurisdiction, if it exists, may be raised at any state of the proceedings, including appeal. See *Brown v. State* (Ind.), 37 NE 2d 73, 137 ALR 679; *State v. Wilson* (Idaho), 242 P 787.

By Section 18 of the Enabling Act, Congress attempted to provide for the continuance of the District Court for the District of Alaska in the new State. The court was to be continued for a period not to exceed three years, wholly in the discretion of the President of the United States, based upon the President's determination as to when the new Federal Court in the State would be prepared to function.

Section 18 of the Enabling Act reads as follows:

> "Sec. 18. The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of

> Alaska, the continuation of suits, the succession of courts, and the satisfaction or rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive Order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. *During such period of three years or until such Executive Order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore.* The tenure of the judges, the United States Attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such times as that court shall cease to function as provided in this section." (Emphasis supplied.)

An examination of this section raises two vital points: (1) The District Court for the District of Alaska (erroneously referred to therein as the "United States District Court for the Territory of Alaska") was to continue to function in the new State "as heretofore". The court was, therefore, to continue to exercise both State and Federal jurisdiction, just as it had operated in the Territory. (2) This court was thus continued, by the Federal Congress, independently of any action by the State, and subject to the sole discretion of a Federal Officer, the President of the United States. Thus, the court was imposed on the State, not "offered" to the State as a convenience or made available if the people of the State wished to use it.

Florida was admitted as a State on March 3, 1845. The Federal Government did not immediately appoint a judge to fill the office of United States District Judge in Florida, and for a time the old Territorial Court continued to operate. In *Benner v. Porter* (1950) 50 US 235, and *Forsyth v. U. S.* (1850) 50 US 571, the Supreme Court had occasion to consider the jurisdiction of the old Territorial Court after the admission of Florida to the Union. Florida was admitted, as was Alaska, "into the Union on an equal footing with the original states in all respects whatsoever."

The Constitution of Florida created a judicial branch, but provided that "all officers, civil and military, now holding their offices and appointments in the Territory under the authority of the United States, or under the authority of the Territory, shall continue to hold and exercise their respective offices and appointments, until superseded under this Constitution." Said the Supreme Court:

> "The Territorial Courts, therefore, were not courts in which the judicial power conferred by the Constitution on the Federal government could be deposited. They were incapable of receiving it, as the tenure of the incumbents was but for four years. (1 Peters, 546.) *Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body was incapable of conferring upon a court within the limits of a State.*" (Emphasis supplied [244].)

Admittedly, the *Benner* and *Forsyth* cases involved questions of Federal jurisdiction, but the fact is that

the Supreme Court recognized two facts: (1) That the admission of Florida to statehood abrogated the old Territorial government and destroyed it completely, in toto; nothing remained. (2) That Congress could not create or continue a Territorial legislative court within the boundaries of a State. Further, that, although there is an implication that a Territorial Court might continue to function in a State exercising State jurisdiction, any such operation would be purely a matter of State power and State action.

Could Congress, today, establish a legislative court of general State jurisdiction, manned by Federal employees, within the boundaries of Massachusetts? It would seem that to ask this question is to answer it.

But it may be argued that the people of Alaska accepted the imposition of the Territorial Court and voluntarily chose to use it during the interim period. This argument is based upon Article XV, Section 17, of the State Constitution, a transitional provision, reading as follows:

> "Until the courts provided for in Article IV are organized, the courts, their jurisdiction, *and the judicial system* shall remain as constituted on the date of admission unless otherwise provided by law."

Upon reading this provision it is immediately apparent that the "offer" of the people of Alaska was to continue to use the complete judicial system during the interim period. Did Congress accept this offer? No. Congress, in effect, rejected the offer by providing only that the District Court for the District of Alaska

might continue—not "until the courts provided in Article IV are organized"; but until the President of the United States should decide that the Federal Court was organized. And, further, by providing that only the District Court for the District of Alaska should continue, but not the judicial system. Obviously, the "judicial system" included the provision of appellate courts for review and supervision. By Section 12 of the Enabling Act, however, the appellate jurisdiction and supervision of the District Court by the Court of Appeals for the Ninth Circuit was destroyed. See, *Parker v. McCarrey,* 268 F 2d 967. The people of Alaska were, therefore, left with a trial court, completely without any appellate supervision, and without any right of appellate review. It certainly could not be contended that the Constitutional Convention would have thought for one moment of accepting any such "bob tailed" arrangement.

B. TO HAVE TRIED THE APPELLANT IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA, WITHOUT NORMAL APPELLATE SUPERVISION OR RIGHT OF APPEAL, VIOLATED HIS CONSTITUTIONAL RIGHTS.

On March 4, 1959, the District Court for the District of Alaska was a unique court, if it had any existence at all. It was unique in that it was wholly without appellate supervision or right of appeal. Previously, the Court of Appeals for the Ninth Circuit possessed appellate jurisdiction. That appellate supervision was destroyed by Section 12 of the Enabling Act, which amended a great many sections of Title

28, United States Code, particularly Sections 1291, 1292, and 1294, so as to eliminate the court from the Ninth Circuit. These amendments were "effective upon admission of Alaska into the Union", and therefore became effective when the President issued the proclamation provided by Section 8(c) of the Enabling Act on January 3, 1959. The fact that a right of appeal later came into being through the provisions of Chapter 151, SLA 1959, operating after the decision of *Parker v. McCarrey,* has no bearing at this point. The right of appeal thus created, did not come into effect until after the appointment of the Supreme Court of Alaska, and did not fill the void in the appellate apparatus which existed on March 4, 1959.

As was recently said by the Supreme Court of the United States in *Griffin v. Illinois* (1956) 351 US 12, 18:

> "All of the States now provide some method of appeal from criminal convictions, recognizing the importance of appellate review to a correct adjudication of guilt or innocence. Statistics show that a substantial proportion of criminal convictions are reversed by State appellate courts. Thus to deny adequate review by the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside."

It is submitted that the need for adequate appellate supervision is, in many instances, just as important as is the ultimate right of review. Two considerations in this respect are vital: (1) Alaska was

thus deprived of appellate supervision and review by *Federal legislation*. Congress could not pass a law depriving the citizens of one State, and of that State alone, of the right of appellate supervision and review possessed by the citizens of every other State. Could Congress now deprive the citizens of New Jersey of the right of jury trial, or the citizens of California of the right of habeas corpus? (2) Although there is no Constitutional right to appellate supervision and appeal, where such a system is provided, it must be uniform and without discrimination.

CONCLUSION

The court in which the Appellant was tried was without jurisdiction of any kind, since it had ceased to have any lawful existence on January 3, 1959.

Dated, Fairbanks, Alaska,
April 21, 1961.

Respectfully submitted,
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Attorney for Appellant.